

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LEONIDES DUVERNY,

18-CV-07652 (DLC)

Plaintiff,

-against-

Affirmation in Opposition

HERCULES MEDICAL P.C. and HYPERION
MEDICAL P.C. and ACHILLES MEDICAL P.C.
and GEOFFREY RICHSTONE, individually,

Defendants.
----- x

David Etkind, an attorney duly admitted to practice law in the United States District Court of the Southern District of New York, hereby affirms under the penalty of perjury as follows:

1. This affirmation is submitted for two purposes.
2. First, the attorney signing the Moving Affirmation and the first named attorney in the Moving Brief is listed in her firm website as a partner who practices discrimination law. *See Exhibit "1"*.
3. Her failure to apprise Your Honor of the after-acquired evidence doctrine is troubling.
4. Instead of advising Your Honor of the after-acquired evidence doctrine, Plaintiff sought to mislead you. Plaintiff cited seven cases to allegedly support a position that Plaintiff knew or should have known was not true. *See Defendants' Opposing Memorandum of Law at Point III.*

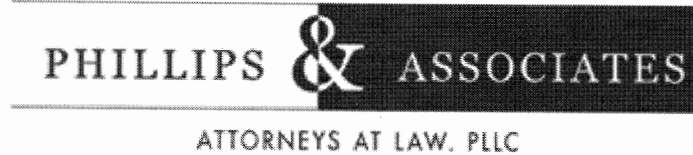
5. Second, given the misconduct by Plaintiff's counsel, we requested that the movants withdraw the motion since we believe that it is sanctionable. Plaintiff refused, thus forcing Defendants to expend time and resources opposing a motion that should never had been made. The emails between counsel on this subject are attached hereto as Exhibit "2".

Dated: New York, New York
October 25, 2018

A handwritten signature in dark ink, appearing to read 'D Etkind', is written over a horizontal line.

David Etkind

Free Consultation: (646) 941-7609



Marjorie Mesidor

mmesidor@tpglaws.com

[Download VCard](#)

Marjorie Mesidor is Partner at Phillips & Associates. She is a Partner at the firm, recognized for her outstanding service to clients who have been subjected to sexual harassment or discrimination based on race, gender, disability, and other protected characteristics. Ms. Mesidor regularly prosecutes employment actions against Fortune 500 companies and smaller organizations accused of discrimination including claims of sexual misconduct. She has had overwhelming success in achieving significant awards and settlements for her clients. Ms. Mesidor rose to notoriety in 2013 when she procured a unanimous jury award in *Johnson v. STRIVE*, a landmark case decidedly settling the issue of whether those of the same race can discriminate against one another. In addition, her work against the disparate impact of "poor door" policies on rent stabilized tenants has earned her recognition by the Office of the Public Advocate.

Ms. Mesidor has been a Guest Legal Correspondent appearing on WPIX Morning News, WBLS "Cafe Mocha" and 103.9 Long Island News Radio "On the Docket", Guest Legal Correspondent. Marjorie is one of the National Black Lawyers' Top 100 Black Lawyers, a "Rising Star" and "Top Woman Attorney" by New York Super Lawyers every year since 2013. As recently 2018, Ms. Mesidor was named CRAIN Magazine's Top Women Attorneys in New York City. She has been a continuing legal education panelist for the National Bar Association's Labor and Employment Section and NELA NY on various topics in trial advocacy, punitive damages and jury awards. She authored an op-ed article published in the online publication, Motto, from the editors of Time® Magazine.

With over 13 years of experience practicing before both state and federal courts, Ms. Mesidor understands the stress and fear that workers experience when their jobs are threatened by a coworker or employer's inappropriate conduct. She handles complex employment law matters in these areas at all stages of the litigation process, serving as a forceful advocate at the negotiating table, and a formidable opponent in the courtroom.

On Friday, October 19, 2018, 8:54:26 AM EDT, Marjorie Mesidor <mmesidor@tpglaws.com> wrote:

David-

Thank you for those message.

The motion to dismiss is as to the counterclaim.

It is not properly plead, it fails to give sufficient specificity to give Plaintiff notice as to the nature of the claim and is improperly attached to the instant action.

It is neither frivolous nor sanctionable.

Moreover, if you were considering moving for sanctions, I am sure you are aware of your Safe Harbor obligations.

If you would like to discuss further, we can do so the week of 10/29— let me know your dates of availability.

In the alternative, we are amenable to signing a stipulation of your voluntary withdrawal of the retaliatory counterclaim filed by Defendants.

Marjorie

Marjorie Mesidor, Esq.

Partner

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<http://www.milliondollaradvocates.com/Box1.gif>

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From: David Etkind <davidetkind@yahoo.com>

Sent: Friday, October 19, 2018 8:36 AM

To: Marjorie Mesidor; Joan Lopez

Subject: Duvernay v. Hercules Medical, P.C. (18-cv-07652 (DLC))

Marjorie and Joan -

We respectfully request that you withdraw the motion to dismiss the affirmative defense and counterclaim asserted in the above-referenced case. The motion is not only frivolous, but also sanctionable.

Please do not force me to proceed this way.

Please provide an answer by this afternoon. Thank you.

David

Sincerely,

David Etkind, Esq.
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New York, New York 10176
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